



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

April 16, 1998
AO-98-07

McFall Kerbey III, Esq.
39 Newport Street
Arlington, MA 02174

Re: Expenditures to “test the waters” for possible campaign for federal office

Dear Mr. Kerbey:

This letter is in response to your March 20, 1998 request for an advisory opinion.

As noted below in answer to your specific questions, the Massachusetts campaign finance law, M.G.L. c. 55, does not prohibit expenditures by a municipal candidate’s campaign to “test the waters” for a possible campaign for federal office. **Such activity, however, may not be consistent with Federal law and regulation.¹**

Questions

- (1) Can funds from a Massachusetts municipal campaign account be used to “test the waters” in assessing a possible campaign for federal office?
- (2) If local campaign funds may be used to “test the waters,” are there limits on the amount of funds which may be used?
- (3) Can payments be made directly to vendors (as opposed to reimbursement of the assessing candidate, as occurred in AO-84-07)?

Answers (for purposes of Massachusetts law only)

- (1) Yes.
- (2) No. Like any other expenditure, however, it must “enhance the political future of the candidate” and may not be used for the candidate’s or any other person’s personal use.
- (3) Yes.

¹ Federal regulations define the extent to which a candidate may receive contributions and make expenditures to “test the waters” for a possible Federal campaign without being required to file reports with the Federal Election Commission (FEC) as a candidate for Federal office. See 11 CFR 100.7(b)(1) and 100.8(b)(1). The regulations also provide that transfers of funds or assets from a candidate’s state campaign to the candidate’s federal campaigns are prohibited. See 11 CFR 110.3(d).

Discussion

M.G.L. c. 55, s. 6 provides, in part, that political committees organized on behalf of candidates for municipal office:

may receive, pay and expend money or other things of **value for the enhancement of the political future of the candidate** . . . , for which the committee was organized so long as such expenditure is not primarily for the candidate's or any other person's personal use, provided, however, that the director shall establish reasonable rules and regulations concerning such expenditures . . . [emphasis added].

Expenditures designed to enhance a candidate's political future, in addition to not being for "personal use," must also bear a reasonable connection to the candidate's nomination or election to office. See M.G.L. c. 55, s. 1 and AO-94-20. We assume that the contemplated expenditures would meet this standard.

The office has issued a memorandum to define the extent to which a candidate may explore a possible federal candidacy. See M-84-01, which states:

A candidate's state political committee is primarily organized for the purpose of handling campaign finance activity in Massachusetts state or local elections . . . any candidate who plans on exploring a federal candidacy or who plans to seek federal office should contact the FEC before raising contributions in relation to such a campaign or even making expenditures of an exploratory nature in order to insure compliance with federal law which would be controlling in this matter.

The memorandum also stated that expenditures to test the waters may be no more than "incidental." On further consideration of the issue, however, we have concluded that chapter 55 does not limit such expenditures to any particular "incidental" threshold. An expenditure to "test the waters" for a possible federal candidacy would, therefore, comply with the Massachusetts campaign finance law if it enhances the candidate's political future and is not for any person's personal use. Expenditures made to assess a possible federal candidacy would comply with this standard, even if they are not "incidental." See AO-84-07 (\$1,300 expenditure appropriate where committee had only \$1,350 in its account at the time). Such expenditures, by definition, are made to enhance a candidate's political future and are not made for any person's personal use.

In AO-84-07 the candidate was reimbursed for expenses made in assessing a possible campaign for federal office. The committee could, alternatively, have paid vendors directly for such expenses.² In either instance, as with any expenditure, the committee would be required to report the expenditure and keep records reflecting the transaction. See M.G.L. c. 55, §§ 2, 5, and 18.

² Depository committees, i.e., committees organized on behalf of candidates for statewide, governor's council, county and certain municipal offices, must pay the vendor directly if the amount of the expenditure is greater than \$50. See M.G.L. c. 55, s. 19.

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This opinion is issued within the context of the Massachusetts campaign finance law and is provided on the basis of representations in your letter. As noted above, Federal law, unlike chapter 55, contains detailed provisions regarding "testing the waters" expenditures. **We strongly advise you, therefore, to contact the Federal Election at 1-800-424-9530 before making any expenditures.** Please contact us if you have further questions regarding chapter 55.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan", followed by a horizontal line.

Michael J. Sullivan
Director

cc: Brad Litchfield, Associate General Counsel
Federal Election Commission